

## **§ 17.211**

for leaves of absence to pursue training;

(8) Employer-sponsored activities, including those that are social or recreation; and

(9) Any other term, condition, or privilege of employment, such as granting awards, recognition and/or monetary recompense for money-saving suggestions or superior performance.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

### **§ 17.211 Reasonable accommodation.**

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(b) Reasonable accommodation may include but is not limited to: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions. This list is neither all inclusive nor meant to suggest that employers must follow all the actions listed.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:

(1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operations, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a handicapped employee or applicant if the basis for denial is the need to make reasonable

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accommodation to the physical or mental limitations of the employee or applicant.

### **§ 17.212 Employment criteria.**

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless it can be demonstrated to the Director that (1) the test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) All job qualifications must be shown to be directly related to the job in question.

### **§ 17.213 Pre-employment inquiries.**

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make a pre-employment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 17.205(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 17.205(b), or when a recipient is taking